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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

MATTHEW J. PLATKIN, ATTORNEY
GENERAL OF THE STATE OF NEW
JERSEY; NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION; and
CARI FAIS, ACTING DIRECTOR OF THE
NEW JERSEY DIVISION OF CONSUMER
AFFAIRS,

Plaintiffs,

v.

EXXON MOBIL CORPORATION;
EXXONMOBIL OIL CORPORATION; BP
P.L.C.; BP AMERICA INC.; CHEVRON
CORPORATION; CHEVRON U.S.A. INC.;
CONOCOPHILLIPS; CONOCOPHILLIPS
COMPANY; PHILLIPS 66; PHILLIPS 66
COMPANY; SHELL PLC; SHELL OIL
COMPANY; and AMERICAN PETROLEUM
INSTITUTE,

Defendants.

No. 3:22-cv-06733-ZNQ-RLS

**PLAINTIFFS' MOTION TO REMAND
TO STATE COURT**

SHER EDLING LLP

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Matthew K. Edling (*pro hac vice forthcoming*)
Katie H. Jones (*pro hac vice forthcoming*)
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PLAINTIFFS' MOTION TO REMAND TO STATE COURT

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD, PLEASE TAKE NOTICE that Plaintiffs Matthew J. Platkin, Attorney General of the State of New Jersey; the New Jersey Department of Environmental Protection; and Cari Fais, Acting Director of the New Jersey Division of Consumer Affairs (collectively, "Plaintiffs") hereby respectfully move the Court for an Order pursuant to 28 U.S.C. § 1447(c), remanding this matter to the Superior Court of New Jersey, Law Division, Mercer County, from which it was removed, and awarding Plaintiffs just costs and any actual expenses, including attorney fees, incurred as a result of the removal. Pursuant to the parties' Stipulation and [Proposed] Order for Extensions of Time and To Set Briefing Schedule (Dkt. 34, filed Dec. 2, 2022), and the Court's order granting the same (Dkt. 36, entered Dec. 5, 2022) (collectively, "Stipulation and Order"), Plaintiffs shall serve their Memorandum of Points and Authorities in Support of Remand by March 13, 2023; Defendants shall serve any opposition within 30 days thereafter; Plaintiffs shall serve their reply brief within 21 days thereafter; and the parties shall file their respective briefs on the day briefing on Plaintiffs' Motion to Remand is complete.

As grounds for this motion, Plaintiffs assert that removal was improper and without an objectively reasonable basis because Plaintiffs' Complaint does not raise any federal claims and the Superior Court of New Jersey, Law Division, Mercer County, is the appropriate forum for adjudicating Plaintiffs' exclusively state-law claims. Defendants have not satisfied and cannot satisfy their burden to establish this Court's jurisdiction under any of the bases cited in Defendants Chevron Corporation and Chevron U.S.A. Inc.'s Notice of Removal (Dkt. No. 1): 28 U.S.C. §§ 1331, 1367(a), 1441(a), 1442, and 1446, and 43 U.S.C. § 1349(b).

- **28 U.S.C. §§ 1331 & 1441(a):** This Court lacks jurisdiction over the subject matter of this case because Plaintiffs solely allege violations of state law. The Complaint asserts no federal law claims, and no claim in Plaintiffs' well-pleaded Complaint arises under the Constitution, laws, or treaties of the United States, including federal common law. Plaintiffs' claims are thus not within this Court's original jurisdiction under 28 U.S.C. § 1331. Nor does the Complaint necessarily raise any disputed, substantial questions of federal law sufficient to create federal question jurisdiction. *See Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg.*, 545 U.S. 308 (2005). Plaintiffs' claims are therefore not removable under 28 U.S.C. § 1441(a).
- **28 U.S.C. § 1442:** The case is not removable pursuant to 28 U.S.C. § 1442, because in carrying out the tortious and deceptive conduct alleged in Plaintiffs' Complaint, Defendants are not and have never been federal officers or persons acting under federal officers performing some act under color of federal office. Any acts Defendants have conducted under a federal superior, moreover, are not related or connected to Plaintiffs' claims, and Defendants have not satisfied their burden to show a colorable federal defense.
- **43 U.S.C. § 1349(b):** The case is not removable pursuant to the Outer Continental Shelf Lands Act because it does not "aris[e] out of, or in connection with . . . any operation conducted

on the outer Continental Shelf which involves exploration, development, or production of the minerals, of the subsoil and seabed of the outer Continental Shelf, or which involves rights to such minerals,” within the meaning of 43 U.S.C. § 1349(b)(1).

- **U.S. Const. art. I, § 8, cl. 17:** Nor is the case removable on the ground that some of the alleged injuries arose, or alleged conduct occurred, on “federal enclaves.” The Complaint expressly disclaims injuries arising on federal property, Compl. ¶ 19, and thus Plaintiffs’ claims did not arise on any federal enclave. Defendants’ contention that this case arises on a federal enclave because some indeterminate portion of their alleged tortious conduct occurred in Washington, D.C., is baseless and has no support in any body of law.

Briefing on these matters will follow pursuant to the schedule set forth in the Stipulation and Order.

Dated: December 21, 2022

MATTHEW J. PLATKIN,
Attorney General of the State of New Jersey

/s/ Andrew Reese

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CERTIFICATE OF SERVICE

I certify that on December 21, 2022, I caused a true and correct copy of the foregoing Plaintiffs' Motion to Remand to State Court to be served on the following counsel of record by electronic transmission at the email address listed below:

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